

AMENDMENT TO H.R. 458
OFFERED BY MR. GUTIERREZ OF ILLINOIS

Page 1, after line 5, insert the following new heading (and redesignate sections 2 through 13 as sections 101 through 112, respectively, and conform any cross reference to any such section):

1 **TITLE I—INSURANCE AND**
2 **INVESTMENT PRODUCTS**

Page 21, after line 3, insert the following new title:

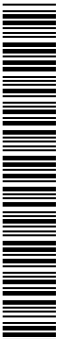
3 **TITLE II—PAYDAY LENDING**

4 **SEC. 201. REGULATION OF PAYDAY LOANS TO MEMBERS OF**
5 **THE ARMED FORCES.**

6 (a) DEFINITIONS.—For purposes of this section and
7 section 202, the following definitions shall apply:

8 (1) CHECK.—The term “check” means any ne-
9 gotiable demand draft drawn on or payable through
10 an office of a depository institution (as defined in
11 section 19(b)(1)(A) of the Federal Reserve Act) lo-
12 cated in the United States.

13 (2) DEFERRED DEPOSIT LOAN.—The term “de-
14 ferred deposit loan” means a transaction in which



1 credit is extended by a payday lender, for a specified
2 period of time, upon receipt by the lender of—

3 (A) a check made by the borrower for the
4 amount of the credit extended, the presentment
5 or negotiation of which, by mutual agreement of
6 the lender and borrower, will be deferred for
7 such specified period; or

8 (B) authorization from the borrower for
9 the payday lender to initiate an electronic fund
10 transfer at the end of the specified period from
11 the account of the borrower for the amount of
12 the credit extended.

13 (3) PAYDAY LENDER.—The term “payday lend-
14 er” means any person who extends credit to any
15 other person through a deferred deposit loan.

16 (b) PAYDAY LOANS PROHIBITED TO MEMBERS OF
17 THE ARMED FORCES UNLESS AUTHORIZED UNDER
18 STATE LAWS THAT LICENSE AND REGULATE SUCH
19 LENDING.—No person engaged in the business of making
20 deferred deposit loans in any State may make any deferred
21 deposit loan to any member of the Armed Forces in any
22 State (including on any military installation of the United
23 States) unless—

24 (1) such person is expressly authorized to en-
25 gage in the business of making deferred deposit



1 loans in such State under a law of such State that
2 the Board determines at least meets, if not exceeds,
3 all the requirements described in section 202 with
4 respect to deferred deposit loans; and

5 (2) such person maintains policies and proce-
6 dures designed to prevent such person from violating
7 any requirement of this section with regard to such
8 loans or with regard to applications, solicitations, or
9 advertisements relating to such loans.

10 (3) SITUS OF LOAN.—For purposes of para-
11 graph (2), a deferred deposit loan shall be consid-
12 ered to be made in the State in which the borrower
13 receives the proceeds of the loan.

14 (c) ADMINISTRATIVE ENFORCEMENT.—The provi-
15 sions of this section shall be enforced under section 108
16 of the Truth in Lending Act in the same manner and to
17 the same extent as if this section were a provision of such
18 Act.

19 (d) CIVIL MONEY PENALTIES.—For purposes of sec-
20 tion 130 of the Truth in Lending Act, a violation of this
21 section shall be treated as a violation of such Act.

22 **SEC. 202. STATE LICENSING AND REGULATION OF PAYDAY**
23 **LOANS.**

24 (a) IN GENERAL.—For purposes of protecting the
25 payment system and protecting members of the Armed



1 Forces who are consumers of payday loans from fraud,
2 abuse, unfair practices, usurious rates of interest, and ex-
3 orbitant fees, deferred deposit loans shall only be lawful
4 in States in which laws and regulations are in effect that
5 meet the requirements described in subsection (b), as de-
6 termined by the Board of Governors of the Federal Re-
7 serve System.

8 (b) MINIMUM REQUIREMENTS FOR DEFERRED DE-
9 POSIT LOANS.—The law of any State meets the require-
10 ments of this subsection if a statute in effect in such State
11 includes the following:

12 (1) LICENSING REQUIREMENTS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graphs (B) and (C), a requirement that any
15 payday lender, other than a depository institu-
16 tion (as defined in section 19(b)(1)(A) of the
17 Federal Reserve Act), be licensed and regulated
18 by an appropriate State agency in order to con-
19 duct any business within such State or make
20 any deferred deposit loan within the State (as
21 determined in accordance with paragraph (12)).

22 (B) DEPOSITORY INSTITUTIONS.—A re-
23 quirement that any depository institution which
24 makes deferred deposit loans in such State (as
25 determined in accordance with paragraph (12))



1 shall be subject to such statute and regulated
2 by an appropriate State agency with respect to
3 such lending activity.

4 (2) LICENSING STANDARDS.—A requirement
5 that—

6 (A) in order for any person to be licensed
7 in the State as a payday lender, the appropriate
8 State agency shall review and approve—

9 (i) the business record and the capital
10 adequacy of the business seeking the li-
11 cense; and

12 (ii) the competence, experience, char-
13 acter, integrity, and financial responsibility
14 of each individual who—

15 (I) is a director, officer, or super-
16 visory employee of such business; or

17 (II) owns or controls, directly or
18 indirectly, such business (including
19 any person who directly or indirectly
20 controls more than 5 percent of the
21 shares or assets of the business;

22 (B) any record, on the part of any business
23 seeking the license or any person referred to in
24 subparagraph (A)(ii), of—

25 (i) any criminal activity;



1 (ii) any fraud or other act of personal
2 dishonesty;

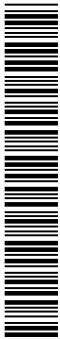
3 (iii) any act, omission, or practice
4 which constitutes a breach of a fiduciary
5 duty; or

6 (iv) any suspension or removal, by any
7 agency or department of the United States
8 or any State, from participation in the con-
9 duct of any federally or State licensed or
10 regulated business,

11 be grounds for the denial of any such license by
12 the appropriate State agency;

13 (C) the applicant establish to the satisfac-
14 tion of the appropriate State agency that the
15 operation of the business at each authorized lo-
16 cation is in the public interest, taking into ac-
17 count the probable effect of such operation in
18 promoting the convenience of, and meeting the
19 credit needs of, the community in which such
20 business is conducted;

21 (D) the applicant and licensed payday
22 lender meet such surety bond requirements and
23 minimum asset requirements as may be estab-
24 lished and maintained by the appropriate State
25 agency; and



1 (E) in order for an applicant to meet the
2 requirements of subparagraph (D)—

3 (i) the applicant maintain a minimum
4 of \$50,000 of surety bond coverage for
5 each business location maintained by the
6 applicant; and

7 (ii) the proceeds of any such surety
8 bond coverage be available to pay any con-
9 sumer for any violation of any Federal or
10 State law relating to deferred deposit
11 loans.

12 (3) PUBLIC HEARINGS.—A requirement that
13 any application for a payday lender license be the
14 subject of a public hearing before any final deter-
15 mination is made with regard to such application by
16 the appropriate State agency.

17 (4) ADMINISTRATIVE ACTION.—Authority for
18 the appropriate State agency to issue regulations to
19 carry out the purposes of such statute, investigate
20 and enforce compliance with the statute and such
21 regulations, handle complaints, suspend or revoke li-
22 censes issued to payday lenders and impose civil
23 money penalties for violations of such statute or reg-
24 ulations, and make public the results of any such in-



1 vestigations or enforcement actions and the records
2 of any complaints.

3 (5) REPORTS AND RECORDS.—A requirement
4 that licensed payday lenders—

5 (A) maintain such records as the appro-
6 priate State agency determines are necessary to
7 enforce compliance with the statute; and

8 (B) submit annual reports to the appro-
9 priate State agency containing such information
10 as the agency determines to be appropriate to
11 allow the agency to enforce compliance with the
12 statute and regulations prescribed by the agen-
13 cy under the statute, including a copy of all
14 loan documents used by the payday lender in
15 connection with deferred deposit loans and a fee
16 schedule.

17 (6) PROHIBITIONS.—A prohibition on—

18 (A) the initiation of any criminal action or
19 any civil proceeding, or use of any threat of ini-
20 tiating any such criminal action or civil pro-
21 ceeding, in connection with the failure of any
22 borrower to repay any deferred deposit loan in
23 accordance with the terms of the loan (other
24 than a proceeding directly related to the collec-
25 tion of such debt and actual damages), includ-



1 ing any criminal action or civil proceeding, or a
2 threat of any such action or proceeding, relat-
3 ing to the act of a customer in drawing a check
4 or authorizing an electronic fund transfer which
5 formed the basis for a payday loan and is
6 drawn on an account with insufficient funds;

7 (B) any practice which is prohibited under
8 section 808 of the Fair Debt Collection Prac-
9 tices Act for a debt collector (as defined in such
10 Act);

11 (C) extending credit under any loan agree-
12 ment which includes any terms which are un-
13 conscionable or against the public interest;

14 (D) engaging in any unfair or deceptive
15 practice;

16 (E) accepting the repayment of any de-
17 ferred deposit loan if the payday lender knows
18 or has any reason to believe that the funds
19 proffered by the borrower were acquired from
20 the proceeds of another deferred deposit loan;

21 (F) refinancing or rolling over any deferred
22 deposit loan, or initiating a new deferred de-
23 posit loan unless 30 days has elapsed from the
24 termination of any prior deferred deposit loan
25 from that payday lender (or any affiliate or



1 other associate of the payday lender) to the cus-
2 tomer;

3 (G) imposing any additional fee or any
4 premium for any credit insurance offered in
5 conjunction with any deferred deposit loan; and

6 (H) including any clause in the note or
7 other document related to the deferred deposit
8 loan which requires the consumer to submit any
9 claim or defense relating to the transaction to
10 binding arbitration or other nonjudicial pro-
11 ceeding.

12 (7) REQUIREMENTS RELATING TO TERMS AND
13 CONDITIONS.—A requirement that—

14 (A) the period to maturity of any deferred
15 deposit loan may not be less than 2 weeks for
16 each \$50 of loan principal;

17 (B) the principal amount of any deferred
18 deposit loan may not exceed \$300;

19 (C) any check which forms the basis of a
20 deferred deposit loan be stamped on the back
21 with an endorsement that the check has been
22 received and is being negotiated in connection
23 with a deferred deposit loan and any subse-
24 quent holder of the check takes it subject to all
25 claims and defenses of the maker;



1 (D) the annual interest rate applicable to
2 any deferred deposit loan may not exceed the
3 lesser of—

4 (i) 36 percent; or

5 (ii) the maximum annual percentage
6 rate allowable in such State for comparable
7 small loans;

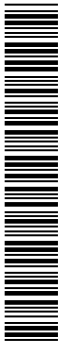
8 (E) the amount of any administrative fee
9 imposed in connection with making a deferred
10 deposit loan may not exceed \$5;

11 (F) any unearned interest on deferred de-
12 posit loans which are paid before the due date
13 shall be repaid to the borrower on an actuarial
14 basis; and

15 (G) the amount of any fee imposed for any
16 check made or any electronic fund transfer au-
17 thorized by a borrower in connection with any
18 deferred deposit loan which is returned unpaid
19 to the payday lender due to insufficient funds
20 in an account of such borrower may not exceed
21 the lesser of—

22 (i) \$15; or

23 (ii) the charge imposed by the finan-
24 cial institution returning the check to the
25 payday lender for handling such check.



1 (8) DISCLOSURES.—A requirement that the fol-
2 lowing information be disclosed in writing to a bor-
3 rower in connection with any deferred deposit loan
4 and posted in a prominent place at any location
5 where deferred deposit loans are made or extended:

6 (A) A complete description of the terms of
7 the loan.

8 (B) A complete description of the rights of
9 the borrower under the laws of the State, the
10 Truth in Lending Act, the Fair Debt Collection
11 Practices Act, the Electronic Fund Transfer
12 Act, and any other provision of law the appro-
13 priate State agency determines to be applicable
14 to such loan.

15 (C) A clear and conspicuous statement
16 that the borrower may not be subject to any
17 criminal action or civil proceeding, or the use of
18 any threat of initiating any such criminal action
19 or civil proceeding, in connection with the fail-
20 ure of any borrower to repay any deferred de-
21 posit loan in accordance with the terms of the
22 loan (other than a proceeding directly related to
23 the collection of such debt and actual damages),
24 including any criminal action or civil pro-
25 ceeding, or a threat of any such action or pro-



1 ceeding, relating to the act of a customer in
2 drawing a check or authorizing an electronic
3 fund transfer which formed the basis for a pay-
4 day loan and is drawn on an account with in-
5 sufficient funds.

6 (9) CIVIL ENFORCEMENT.—Provision for civil
7 penalties for violations of the statute with a min-
8 imum civil money penalty of \$1,000 for any violation
9 of the statute by any payday lender.

10 (10) PRIVATE RIGHT OF ACTION.—Provisions
11 that make any person who violates any provision of
12 the statute with respect to any other person liable to
13 such other person, or to a class of such other per-
14 sons, for actual, consequential, and punitive dam-
15 ages, statutory damages of \$1,000 for each violation,
16 and costs and attorney's fees.

17 (11) CRIMINAL PENALTIES FOR OPERATION OF
18 BUSINESS WITHOUT A LICENSE.—A criminal penalty
19 for anyone, other than a depository institution, mak-
20 ing any payday loan within the State after the effec-
21 tive date of such State statute without a license
22 issued by the State.

23 (12) CRIMINAL PENALTIES FOR OTHER VIOLA-
24 TIONS OF THE STATUTE.—A provision that any per-
25 son who knowingly violates any provision of the stat-



1 ute, or any regulation prescribed under the statute,
2 shall be subject to a fine of \$1,000, imprisonment
3 for not to exceed 6 months, or both.

4 (13) SITUS OF LOAN.—A deferred deposit loan
5 is considered to be made in the State in which the
6 borrower will receive the proceeds of the loan.

Amend the title so as to read: “To prevent the sale
of abusive insurance and investment products to military
personnel and regulate payday lending to military per-
sonnel”.

